IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 13TH NOVEMBER 2006 / 22ND KARTHIKA 1928

CRL.A.No. 2074 of 2005(A)

SC.1223/2003 of THE COURT OF THE ADDL. DISTRICT AND SESSIONS JUDGE (FAST TRACK COURT-1) THIRUVANANTHAPURAM.
CP.109/2003 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, TRIVANDRUM

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APPELLANT:

SOMAN @ KOCHUSOMAN,
S/O. KRISHNAN NAIR, C.NO.9906,
CENTRAL PRISON, THIRUVNANTHAPURAM-695 012.

BY ADV. ADV.C.T.JESTIN(STATE BRIEF)

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY A PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI.C.M.NAZAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.Thankappan, J.

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Crl. A. No. 2074 of 2005

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Dated this the 13th day of November, 2006

JUDMENT

First accused in S.C.No.1223/2003 of the Additional District and Sessions Judge (Fast Track Court-I), Thiruvananthapuram is the appellant. He was charge-sheeted along with 2nd accused, his wife, for the offences punishable under sections 323 and 308 read with section 34 IPC.

2. The prosecution case against the appellant is that on 1-2-2003 at about 2 P.M. he knocked down PW6 with his hands and the 2nd accused fisted PW6 on various parts of his body. Then the appellant picked up a bottle and after braking the bottle stabbed PW6.

3. The prosecution examined Pws.1 to 6 and Exts. P1 to P5 were marked. MO1 broken piece of the bottle was also marked. After closing of the prosecution evidence, the appellant and 2nd accused were questioned under section 313 of the Code of Criminal Procedure. They denied the prosecution case.

4. Relying on the evidence adduced by the prosecution both, oral and documentary, the trial court found the appellant guilty under sections 323 and 324 IPC. He was convicted thereunder and sentenced to undergo simple imprisonment for three months and to pay a fine of Rs.1,000/- and

in default rigorous imprisonment for one month under section 323 IPC and he was sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.3,000/- and in default to undergo rigorous imprisonment for four months under section 324 IPC. The benefit of under section 428 IPC was also granted to him. It is also ordered that if the fine amount was recovered, Rs.3,000/- would be paid to PW6. It is further ordered that the sentence should run concurrently.

5. Heard.

6. Pws.1and 3 are occurrence witnesses. PW2 is the doctor who examined PW6 and issued Ext.P1 wound certificate. PW4 and PW5 are police officials. PW4 recorded Ext.P2 F.I. Statement of PW6 and prepared Ext.P2(a). PW5 registered a case, prepared Ext.P2(b) F.I.R. and conducted the case. PW6 is the injured.

7. The evidence of PW1 would show that on the date of occurrence he was conducting lottery business near the Comfort Station of East Fort Bus Stand. According to PW1, on 1-2-2003 in the noon the appellant knocked on the body of PW6. PW6 fell down. Then he stood up and questioned the appellant, thereby a push and pull took place between them. The appellant, who was found along with the 2nd accused, fisted PW6 several times. The 2nd accused also fisted him. Then the appellant picked up a bottle lying

there and after braking the bottle stabbed PW6 on the back side of his head, shoulder and left upper arm. The evidence of PW3 would also show that the appellant picked up a bottle and after braking the same stabbed PW6 on the back of his head, left side of back and the 2nd accused beat PW6 with her hands. The trial court rightly come to the conclusion that the evidence of PW1 and PW3 corroborated in all material particulars with the evidence of PW6 and the evidence of PW1 and PW3 could be safely relied and acted upon to hold that the appellant inflicted injuries to PW6 by fisting him and by stabbing him with the broken glass and the 2nd accused fisted him. Even though the trial court found that there is no evidence to prove the appellant committed offence under section 308 read with section 34 IPC, on the basis of evidence adduced by the prosecution the trial court found that the appellant guilty under sections 323 and 324 IPC. On appreciation of the over all evidence adduced by the prosecution, this Court is of the view that the findings entered by the trial court that the appellant guilty under sections 323 and 324 IPC are correct and they require no interference by this Court.

8. With regard to the sentence awarded by the trial court, this Court is of the view that the sentence awarded against the appellant is excessive. The trial court found that the injuries noted in Ext.P1 were only minor

injuries. In Ext.P2 PW6 has no case that the appellant inflicted injuries to him with intention to kill him. From the nature of the injuries sustained by PW6 and from the evidence of PW1 to PW3, this Court is of the view that the sentence awarded by the trial court under section 324 IPC has to be reduced.

9. In the above circumstances, the conviction entered against the appellant under sections 323 and 324 IPC is confirmed. With regard to the sentence awarded against the appellant under section 324 IPC, this Court already found that the sentence awarded against the appellant under section 324 IPC was excessive. Hence, the sentence under section 324 IPC is reduced to one year and the fine imposed against the appellant is set aside. As the appellant is already in jail for more than one year, he may be released forthwith unless required in any other case.

The appeal is allowed as above.

K. Thankappan,
Judge.

K. Thankappan,J.

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Judgment

13-11-2006

K. Thankappan,J.

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Gist of the Judgment

13-11-2006